

REMARKS

Regarding the Status of the Claims:

Claims 27 – 47 are pending.

Claims 27 – 38 are rejected.

Claims 39 – 47 have been withdrawn from consideration.

Regarding the Claim Amendments:

The amendments to the claims add no new matter and do not raise any new issue requiring further search or consideration. The amendment to claim 31 merely clarifies that the elements of the second transport device are not the elements of the first transport device. The amendment to claim 32 merely clarifies that the multipath access system comprises a delivery station for delivering one or more vessels to the transport device, rather than a delivery station comprising means for delivering.

Regarding the Restriction Requirement:

The Office action requires restriction between the following Groups of Claims:

- I. claims 27 – 38, drawn to a multi-path access system for use in an automated immunoassay analyzer;
- II. claims 39 – 46, drawn to a multi-path access system for use in an automated immunoassay analyzer; and
- III. claim 47, drawn to a method for moving samples in an automated immunoassay analyzer.

The Office action asserts that claims 27 – 38 have been constructively elected by original presentation.

Applicants traverse the restriction requirement. The Office action summarily asserts that Groups I and II are related as combination and subcombination. To the contrary, MPEP §806.05(a) explains, “[a] combination is an organization of which a subcombination or element is a part.” The invention described by claim 39 is not a subcombination of the invention described by claim 27, but rather sets forth all of the same components of that claim.

Regarding restriction of Group III from Groups I. and II., on page 3, lines 4 – 6,

the Office action asserts, “the apparatus of Groups I and II, as claimed can be used to practice another and materially different process which does not require the step of optimizing the path for each sample such that samples having identical resource requirements travel an equal distance around the first continuous loop as required in Group III.” This assertion is insufficient to support the requirement for restriction. MPEP §806.05(3) explains, “[t]he burden is on the examiner to provide reasonable examples that recite material differences.” The assertion fails to state a material difference between the method as set forth and the process as allegedly capable of being carried out by the claimed apparatus.

In view of the foregoing, reconsideration and withdrawal of the restriction requirement is requested.

Regarding the Objection to the Drawings:

The Office action objects to the drawings under 37 C.F.R. §1.83(a) on the ground that the ‘means for delivering’ in claim 32 is not illustrated. This objection is moot in light of the amendment to claim 32.

Regarding the Objections to the Specification:

The Office action objects to the specification as failing to provide antecedent basis for several “means plus function” terms.

The specification provides support for a transport device comprising “means for holding a plurality of vessels” as recited in claim 27. Similarly, the specification provides support for a second transport device comprising “second means for holding a plurality of vessels” as recited in claim 31. Since the term “vessel holding means” is simply an alternate expression for “means for holding a plurality of vessels,” the specification also provides support for “vessel holding means” as recited in claims 27 and 31. For example, on page 3, lines 13 – 14, the specification explains, “[t]he multipath incubator includes a) a transport device (e.g. an incubator belt) having a plurality of vessel holding members” Figure 2 also illustrates “Vessel Holding Members 207.” Figures 7 and 8 illustrate embodiments of the invention having multiple transport devices each comprising means for holding a plurality of vessels.

The specification provides support for a transport device comprising “means for moving the vessel holding means in a continuous loop” as recited in claim 27, and in claim 38, which depends from claim 27. Similarly, the specification provides support for a second transport device comprising “second means for moving the vessel holding means in a continuous loop” as recited in claim 31. For example, on page 3, lines 13 – 16, the specification explains, “[t]he multipath incubator includes a) a transport device (e.g. an incubator belt) having a plurality of vessel holding members where the transport device moves the plurality of vessels along one or more continuous loops” Figure 2 illustrates “Vessel Holding Members 207,” and “Incubator Belt 202.” Figures 7 and 8 illustrate embodiments of the invention having multiple transport devices each comprising means for holding a plurality of vessels, and “Incubator chains 802.” Various embodiments of incubator belt arrangements are discussed in the specification. *See*, page 14, lines 4 – 14, for example.

The specification provides support for a transfer station comprising “a means for moving vessels to and from the vessel holding means” as recited in claim 27. Similarly, the specification provides support for a transfer station comprising “a means for moving vessels (i) from the vessel holding means of the first transport device to the vessel holding means of the second transport device, and (ii) from the vessel holding means of the second transport device to the vessel holding means of the first transport device” as recited in claim 31. For example, on page 5, lines 18 – 23, the specification explains, “[i]n one embodiment, the removing or replacing step is achieved using a transfer station which includes a transfer slide that moves perpendicular to a portion of a path traveled by the transport device, the transfer slide having one or more projecting members which contact a vessel and move the vessel while the transfer slide is moved.” On page 9, lines 9 – 11, the specification further explains, “movement of the test vessel into and out of the station is preferably accomplished by means of a transfer slide, depicted schematically as 20A and 20B in FIG. 2.” The specification also describes a means for moving vessels to and from the vessel holding means on page 10, line 5 – page 11, line 16. Finally, Figures 3A, 3B, 3C, 3D, 4A, 4B, 4C, and 4D illustrate means for moving vessels to and from the vessel holding means.

The specification provides support for a delivery station comprising “means for

delivering one or more vessels to the transport device” as recited in claim 32. For example, on page 3, lines 13 – 17, the specification explains, “[t]he multipath incubator includes ... b) at least one delivery station for adding a vessel to the transport device at a specified vessel holding member of the plurality of vessel holding members....” Vessel Delivery Stations are also illustrated in Figures 2, 7, 8 and 9.

Regarding the Objections to the Claims:

The Office action objects to claims 27 – 28. This objection is moot in light of the amendment to claim 31.

Regarding the Claim Rejections:

The Office action rejects:

- I. claim 32 under 35 U.S.C §112, first paragraph;
- II. claims 27 – 38 under 35 U.S.C §112, second paragraph; and
- III. claims 27 – 38 under 35 U.S.C §102(b) over US 5,885,529 to Babson et al. (hereinafter, “Babson”).

Regarding Rejection I:

Applicants respectfully submit that the rejection of claim 32 under 35 U.S.C §112, first paragraph should be withdrawn. This rejection is moot in light of the amendment to claim 32.

Regarding Rejection II:

Applicants respectfully submit that the rejection of claims 27 – 38 under 35 U.S.C §112, second paragraph should be withdrawn. The section above regarding the objections to the specification, makes reference to portions of the specification which set forth structures corresponding to the means-plus-function terminology used in the claims. 35 U.S.C. 112, sixth paragraph states that a claim limitation expressed in means-plus-function language “shall be construed to cover the corresponding structure described in the specification and equivalents thereof.” “The disclosure of the structure may be implicit or inherent in the specification, if it would have been clear to those skilled in the

art what structure corresponds to the means-plus-function claim limitation.” MPEP §2181, citing, *Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1380, 53 USPQ2d 1225, 1229 (Fed. Cir. 1999). Applicants respectfully submit that the specification makes clear to those skilled in the art what structures correspond to the means-plus-function claim limitations.

Regarding Rejection III:

Applicants respectfully submit that the rejection of claims 27 – 38 under 35 U.S.C §102(b) over Babson should be withdrawn.

Babson does not disclose a multipath access system for use in an automated immunoassay analyzer, comprising a programmable controller, programmed to determine an individual path along the continuous loop for each of a plurality of vessels, where each vessel has a resource requirement, and where the determination of each path is based on the resource requirement associated with each vessel. The computer control utilized in Babson does not determine an individual path for each sample. The computer control of Babson merely “allows the operator to pick the tests desired for each sample, and, if desired, to prioritize the sample if stat or unstable.”¹ Otherwise, Babson assays samples “methodically in sequence around the carousel....”² Thus, an individual path is not determined for each sample. The samples are analyzed in a first-in-first-out manner without regard to resource requirements for each sample.

Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention.³ “The identical invention must be shown in as complete detail as is contained in the patent claim.”⁴

On page 13, lines 9 – 10, the Office action alleges, “the controller determines the individual paths for each sample, based on the test desired for each sample.” To the contrary, an individual path is not determined for each sample in Babson. The samples are analyzed in a first-in-first-out manner without regard to resource requirements for each sample. Thus, the present claims are not anticipated.

¹ Column 10, lines 17 – 19 *Babson et al.* (US 5,885,529).

² Column 11, line 33 of *Babson et al.* (US 5,885,529).

³ See, *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984).

⁴ *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

In Conclusion:

The present application is in condition for allowance. Applicants request favorable action in this matter. In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner is welcome to contact the undersigned by phone to further the discussion.

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